



AT&T

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VIA ELECTRONIC FILING SYSTEM

Ms. Linda C. Bridwell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

Re: AT&T Kentucky's Response To Objections of The Kentucky Broadband and Cable Association To Proposed Pole Attachment Tariffs

Dear Executive Director Bridwell:

Attached, please find AT&T Kentucky's Response To Objections of The Kentucky Broadband and Cable Association To AT&T's Proposed Pole Attachment Tariff, filed today in: *In the Matter of: Electronic Investigation of the Proposed Pole Attachment Tariffs of Incumbent Local Exchange Carriers*, Case No. 2022-00108.

Sincerely,

John T. Tyler
Attorney for AT&T Kentucky

Enclosures

KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF THE)	
PROPOSED POLE ATTACHMENT TARIFFS OF)	Case No.
INCUMBENT LOCAL EXCHANGE CARRIERS)	2022-00108

AT&T’S¹ RESPONSE TO KENTUCKY BROADBAND AND CABLE ASSOCIATION’S² OBJECTIONS TO AT&T’S PROPOSED POLE ATTACHMENT TARIFF³

AT&T respectfully requests that the Commission reject KBCA’s Objections to AT&T’s Tariff and, for the reasons discussed below, determine that the Tariff, as submitted to the Commission on February 28, 2022, is just and reasonable pursuant to KRS 278.030, and fully compliant with all applicable law.

Within its pleading, KBCA makes three objections to AT&T’s Tariff, none form a basis for the Commission to find the Tariff unreasonable, and each should be dismissed because: 1) the manner of resolving unauthorized attachments KBCA complains of in AT&T’s Tariff is reasonable; 2) AT&T’s 24-month claims limitation period is reasonable; and 3) AT&T’s indemnity provision is reasonable.

I. Section 18.2 of AT&T’s Tariff Related to Unauthorized Attachments is Reasonable

For its first objection, KBCA states:

Sanction For Declining To Participate In An Inventory Survey. KBCA objects to the provision that: “[i]f Attaching Party declines to participate in an Inventory Survey (i.e., providing the locations of its existing attachments), and AT&T discovers an unauthorized attachment by Attaching Party, AT&T will also be entitled to invoice Attaching Party a sanction of \$100.00 for each such unauthorized attachment that AT&T discovers.” In order for this penalty to apply, there must be a meaningful opportunity for the attaching party to participate in the audit. If an

¹ BellSouth Telecommunications, LLC d/b/a AT&T Kentucky (AT&T).

² KBCA.

³ Tariff.

attacher participates by cooperating with AT&T during the audit process (without actually going out in the field with the auditors, which may not be possible), that cooperation should constitute participation.

First, KBCA's title: "Sanction For Declining To Participate In An Inventory Survey" is a misnomer. To be clear, and as is apparent from the text of the Tariff, this is not a sanction for declining to participate in an inventory survey. Rather, it is a reasonable remedy for resolving unauthorized attachments when a party with unauthorized attachments declines to participate in an inventory survey.⁴

Furthermore, the Tariff language is consistent with well-established precedent of the Commission and the Federal Communications Commission (FCC) regarding this issue. Over a decade ago, in April 2011, the FCC determined that, going forward, it would consider contract-based penalties for unauthorized attachments to be presumptively reasonable if they do not exceed those implemented by the Oregon Public Utilities Commission (Oregon PUC), including but not limited to: (a) an unauthorized attachment fee of five times the current annual rental fee per pole if the pole occupant does not have a permit and the violation is self-reported or discovered through a joint inspection; and (b) an additional sanction of \$100 per pole if the violation is found by the pole owner in an inspection in which the pole occupant has declined to participate.⁵ Specifically, the FCC stated:

To address the concerns implicated by unauthorized attachments, we explicitly abandon the *Mile Hi* limitation on penalties and instead create a safe harbor for more substantial penalties. Specifically, going forward, we will consider contract-based penalties for unauthorized attachments to be presumptively reasonable if they do not exceed those implemented by the Oregon PUC. Oregon has established a multifaceted system that contains, among others, the following provisions:

⁴ See Tariff, Section 18.2.2.

⁵ See *In the Matter of Implementation of Section 224 of the Act, A National Broadband Plan for our Future*, Report and Order and Order on Reconsideration, WC Docket Number 07-245, GN Docket No. 09-51, FCC Rcd, Volume 26, No 7, pages 5291-5292 at ¶115 (April 7, 2011).

- An unauthorized attachment fee of \$500 per pole for pole occupants without a contract (*i.e.*, when there is no pole attachment agreement between the parties);
- An unauthorized attachment fee of five times the current annual rental fee per pole if the pole occupant does not have a permit and the violation is self-reported or discovered through a joint inspection, with an additional sanction of \$100 per pole if the violation is found by the pole owner in an inspection in which the pole occupant has declined to participate.
- A requirement that the pole owner provide specific notice of a violation (including pole number and location) before seeking relief against a pole occupant.
- An opportunity for attachers to avoid sanctions by submitting plans of correction within 60 calendar days of receipt of notification of a violation or by correcting the violation and providing notice of the correction to the owner within 180 calendar days of receipt of notification of the violation.
- A mutual obligation of pole owners and pole occupants to correct immediately violations that pose imminent danger to life or property. If a party corrects another party's violation, the party responsible for the violation must reimburse the correcting party for the actual cost of corrections.
- The opportunity for resolution of factual disputes via settlement conferences before an alternative dispute resolution forum.⁶

The FCC explained: “[t]he record shows that the system of fines instituted by the Oregon PUC has been effective in reducing substantially the incidence of unauthorized attachments in that state.”⁷ It continued:

we have examined Oregon’s rules and find them to be reasonable, and that we would expect to find reasonable any unauthorized attachment provisions contained in agreements that do not exceed Oregon penalties. As noted above, however, the Oregon sanctions are part of a larger system that also affords protections to attachers that operate in good faith. Consequently, we anticipate that, like the Oregon system, a reasonable pole attachment agreement also will contain

⁶ *Id.* at ¶ 115.

⁷ *Id.* at ¶ 117.

provisions that provide notice to attachers, a fair opportunity to remedy violations, and a reasonable process for resolving factual disputes that may arise.”⁸

In the present instance, AT&T’s Tariff contains provisions that provide notice to attachers, a fair opportunity to remedy violations, and a reasonable process for resolving factual disputes that may arise. Specifically, the Tariff requires written notice of unauthorized attachments pursuant to the Notices Provision set forth in Section 20 of the Tariff. Additionally, the Tariff specifically provides that the Attaching Party can avoid the sanction by submitting an Application within 60 days of receiving AT&T’s written notice and correcting any safety violations.⁹ Finally, the Tariff provides a reasonable process for resolving factual disputes that may arise and KBCA does not contend that any of these provisions are unreasonable.¹⁰

Moreover, the Commission has repeatedly approved Interconnection Agreements (ICAs) with competitive local exchange carriers that contain this same language.¹¹

⁸ *Id.* at ¶ 118.

⁹ *See* Tariff, Section 18.2.3.

¹⁰ *See* Tariff, Section 29.3, 29.6, and 29.7.

¹¹ *See* (1) Interconnection and/or Resale Agreement Under Section 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way Non-FCC States between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee, *et al.*, and Lingo Communications of Kentucky, LLC, approved by the Commission on December 14, 2021; (2) Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee; Illinois Bell Telephone Company, LLC, d/b/a AT&T Illinois, Indiana Bell Telephone Company, d/b/a AT&T Indiana; Michigan Bell Telephone Company, d/b/a AT&T Michigan; Nevada Bell Telephone Company, d/b/a AT&T Nevada and AT&T Wholesale; The Ohio Bell Telephone Company, d/b/a AT&T Ohio, Pacific Bell Telephone Company, d/b/a AT&T California; Southwestern Bell Telephone Company, d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas; and Wisconsin Bell, Inc., d/b/a AT&T Wisconsin, and Simwood Inc., approved by the Commission on July 16, 2020 (also applies to the states of Arkansas, Florida, Missouri, Ohio, Texas, and Wisconsin); (3) Interconnection and/or Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee; Illinois Bell Telephone Company, LLC, d/b/a AT&T Illinois, Indiana Bell Telephone Company, d/b/a AT&T Indiana; Michigan Bell Telephone Company, d/b/a AT&T Michigan; Nevada Bell Telephone Company, d/b/a AT&T Nevada and AT&T Wholesale; The Ohio Bell Telephone Company, d/b/a AT&T Ohio, Pacific Bell Telephone Company, d/b/a AT&T California; Southwestern Bell Telephone Company, d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas; and Wisconsin Bell, Inc., d/b/a AT&T Wisconsin and CBTS Technology Solutions,

The Commission should find the Tariff reasonable because: (a) the FCC, has determined that a sanction of \$100 per pole is reasonable if the violation is found by the pole owner in an inspection in which the pole occupant declined to participate; (b) AT&T's Tariff requires written notice of the sanction to the Attaching Party as suggested by the FCC; (c) the Tariff provides a fair opportunity to remedy violations, as suggested by the FCC, in that it allows the Attaching Party to avoid the sanction by submitting an Application within 60 days of receiving written notice and correcting any safety violations within 180 days; (d) it provides a reasonable process for resolving factual disputes that may arise in Sections 29.3, 29.5, 29.6, and 29.7; (e) the Tariff is designed to, and AT&T believes will, reduce the number of unauthorized attachments throughout the Commonwealth and, thereby better ensure the safety of Structure Access in Kentucky; (f) approval of the Tariff would ensure that all Attaching Parties would be treated the same regardless of whether they have an ICA, a Stand-Alone Structure Access Agreement, or attach to AT&T's Structures pursuant to the Tariff; and (g) the Tariff is consistent with AT&T's structure access agreements in the 21 states in which AT&T operates as an ILEC, and as the FCC stated is "presumptively reasonable."

LLC, in the states of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, and Texas, CBTS Technology Solutions, Inc. in the state of Michigan, Cincinnati Bell Any Distance, in the states of Alabama, California, Louisiana, Mississippi, and Wisconsin, Cincinnati Bell Extended Territories LLC, in the states of Indiana, Kentucky and Ohio, approved by the Commission on February 19, 2020 (also applies in the states of Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Wisconsin); (4) Interconnection and/or Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee, *et al.*, and Metro FiberNet, LLC, approved by the Commission on January 7 2019; and (5) Interconnection and/or Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee, *et al.*, approved by the Commission on June 29, 2018.

Finally, contrary to KBCA’s misstatement, AT&T’s Tariff does provide a meaningful opportunity for the Attaching Party to participate in an audit. In Section 15.11, AT&T provides 60 days’ notice of upcoming inventories which are to be conducted no more than once every 5 years. Further, although KBCA does not explain how it would cooperate with AT&T by participating in an audit, Section 18.2.3 specifies how an Attaching Party may cooperate with AT&T without the burden of going out in the field with the auditors. For all of these reasons, the Commission should dismiss KBCA’s objection to this section of the Tariff.

II. AT&T’s Claims Limitation is Reasonable

For its second objection, KBCA states:

Claims Limitations. KBCA objects to Section 29.1, including the provision that “[e]xcept as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising from this Agreement more than 24 months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention. Any legal action arising in connection with this Agreement must be filed within 24 months after the cause of action accrues, with the exception of a Continuing Violation, or it will be time-barred and waived. The parties waive any statute of limitations to the contrary.”

Despite its objection, KBCA does not provide an alternative to AT&T’s reasonable 24-month Finality of Dispute provision.¹² The Commission has repeatedly approved ICAs that contain similar language, and approval of the Tariff will ensure that all Attaching Parties are treated the same regardless of whether they have an ICA, Stand-Alone Structure Access Agreement, or are attached pursuant to the Tariff.¹³

¹² See Tariff, Section 29.1.1.

¹³ See (1) Interconnection and/or Resale Agreement Under Section 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way Non-FCC States between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee, *et al.*, and Lingo Communications of Kentucky, LLC, approved by the Commission on December 14, 2021; (2) Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee; Illinois Bell

AT&T's ICA provides:

29.0 DISPUTE RESOLUTION – FINALITY OF DISPUTES

Except as otherwise provided below, Dispute Resolution will be governed by the GT&Cs of this Agreement.

29.1 Except as otherwise specifically provided for in this Attachment, no claim may be brought for any dispute arising from this Attachment more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention. Any legal action arising in connection with this Attachment must be filed within twenty-four (24) months after the cause of action accrues, with the exception of a Continuing Violation, or it will be deemed time-barred and waived. The Parties waive any statute of limitations to the contrary. Continuing Violations are specifically exempt from the waiver of any statute of limitations and shall be brought within the time set forth in the applicable state's statutes.

Telephone Company, LLC, d/b/a AT&T Illinois, Indiana Bell Telephone Company, d/b/a AT&T Indiana; Michigan Bell Telephone Company, d/b/a AT&T Michigan; Nevada Bell Telephone Company, d/b/a AT&T Nevada and AT&T Wholesale; The Ohio Bell Telephone Company, d/b/a AT&T Ohio, Pacific Bell Telephone Company, d/b/a AT&T California; Southwestern Bell Telephone Company, d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas; and Wisconsin Bell, Inc., d/b/a AT&T Wisconsin, and Simwood Inc., approved by the Commission on July 16, 2020 (also applies to the states of Arkansas, Florida, Missouri, Ohio, Texas, and Wisconsin); (3) Interconnection and/or Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee; Illinois Bell Telephone Company, LLC, d/b/a AT&T Illinois, Indiana Bell Telephone Company, d/b/a AT&T Indiana; Michigan Bell Telephone Company, d/b/a AT&T Michigan; Nevada Bell Telephone Company, d/b/a AT&T Nevada and AT&T Wholesale; The Ohio Bell Telephone Company, d/b/a AT&T Ohio, Pacific Bell Telephone Company, d/b/a AT&T California; Southwestern Bell Telephone Company, d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas; and Wisconsin Bell, Inc., d/b/a AT&T Wisconsin and CBTS Technology Solutions, LLC, in the states of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, and Texas, CBTS Technology Solutions, Inc. in the state of Michigan, Cincinnati Bell Any Distance, in the states of Alabama, California, Louisiana, Mississippi, and Wisconsin, Cincinnati Bell Extended Territories LLC, in the states of Indiana, Kentucky and Ohio, approved by the Commission on February 19, 2020 (also applies in the states of Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Wisconsin); (4) Interconnection and/or Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee, *et al.*, and Metro FiberNet, LLC, approved by the Commission on January 7 2019; and (5) Interconnection and/or Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee, *et al.*, approved by the Commission on June 29, 2018.

The Commission has repeatedly approved ICAs with this language and it is, therefore, presumptively reasonable.¹⁴

Also, the 24-month claim limitation strikes a balance for both parties. For example, the Attaching Party must file a billing dispute within 24 months from the date of the bill. Similarly, AT&T may only back bill Attaching Party for 24 months if it fails to timely render a Structure Access invoice. Two years is more than enough time to bring a dispute and is a standard provision in AT&T's ICAs, Stand-Alone Structure Access Agreements, and is reasonable for the Tariff.

The Commission should approve the Tariff because: (a) it has repeatedly approved similar language in ICAs; (b) it is reasonable; (c) it ensures that all Attaching Parties--whether they are attached to AT&T's poles pursuant to an ICA, a Stand-Alone Structure Access Agreement, or pursuant to the Tariff are treated similarly; and (d) the provision is consistent with AT&T's Structure Access agreements in the 21 states in which AT&T operates as an ILEC.

KBCA has failed to provide a more reasonable alternative, and the Commission should summarily dismiss KBCA's objection with regard to AT&T's Finality of Disputes provision.

III. AT&T's Indemnity Provision is Reasonable

For its third and final objection, KBCA states:

Indemnity. KBCA objects to any standard that would hold an attacher responsible for the negligence of a pole owner. KBCA specifically objects to Section 22.2, which states: "Attaching Party will indemnify, hold harmless, and, on request, defend AT&T from any Claim or Liability, if such Claim and/or Liability arises out of Attaching Party's work in, on, or in the vicinity of AT&T's Structure and/or Attaching Party's access to or use of AT&T's Structure, except to the extent caused by AT&T's willful or intentional misconduct, or gross negligence.

First, AT&T notes an applicable, well-established industry safety standard uniformly practiced when working aloft: personnel examine each pole prior to working aloft, even when

¹⁴ *Id.*

working from a bucket truck.¹⁵ This reduces risk of injury by ensuring that, prior to commencing work, any person intending to work aloft identifies rot, and other conditions, that would make such work dangerous.¹⁶ Provisions like that found in the Tariff are standard provisions and appropriately apportion risk, and place responsibility for determining pole viability on the entity proposing to work aloft at the moment in question. Thus, KBCA’s objection to any standard that would hold an attacher responsible for the negligence of a pole owner is inconsistent with commonsense, and reasonable well-established industry precedent.

Moreover, the Commission has repeatedly approved ICAs containing this same language,¹⁷ and approval of the Tariff will ensure that all Attaching Parties are treated the same regardless of

¹⁵ See Blue Book – Manual of Construction Procedures, Special Report SR-1421, Issue 6, March 2017 (Telcordia-NIS). “All poles must be visually examined before work operations are begun that involve pole climbing, placing a ladder against the pole or strand, hanging an aerial platform, riding a strand, or similar procedures where a load is placed on a pole. *Id.* at Section 12-1. “No pole climbing shall be started unless the employee is satisfied, based upon the visual inspection and any subsequent pole testing, that the pole line structure has adequate strength to support the load resulting from working aloft and the load that will result from the intended work operations. If the strength of the pole line structure is in doubt, supports must be applied before starting work.” *Id.*

¹⁶ *Id.* “Although pole failures may occur as a result of unusual conditions or inadequate preservation treatment, a failure of a pole is usually due to one or more of the following causes:

- Decay of the pole at or below groundline.
- Storm damage.
- Mechanical damage from automotive or other impact.
- Insect damage from termites, carpenter ants, or other insects.
- Lightning damage or fire damage.
- Woodpeckers.
- Application of excessive loads or creating unbalanced loads that can become too great under normal expected conditions (*e.g.*, average storm or ice loading). Such loads may result from improper or inadequate construction or maintenance methods.” *Id.*

¹⁷ See (1) Interconnection and/or Resale Agreement Under Section 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way Non-FCC States between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee, *et al.*, and Lingo Communications of Kentucky, LLC, approved by the Commission on December 14, 2021; (2) Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee; Illinois Bell Telephone Company, LLC, d/b/a AT&T Illinois, Indiana Bell Telephone Company, d/b/a AT&T Indiana; Michigan Bell Telephone Company, d/b/a AT&T Michigan; Nevada Bell Telephone Company, d/b/a AT&T Nevada and AT&T Wholesale; The Ohio Bell Telephone Company, d/b/a AT&T Ohio, Pacific Bell Telephone Company, d/b/a AT&T

the legal authority under which they attach whether it be an ICA, Stand Alone Structure Access Agreement or Tariff.

Moreover, the indemnity provision is a reasonable mutual obligation. Specifically, Section 22.2 provides:

Attaching Party will indemnify, hold harmless, and, on request, defend AT&T from any Claim or Liability, if such Claim and/or Liability arises out of Attaching Party's work in, on, on in the vicinity of AT&T's Structure and/or Attaching Party's access to or use of AT&T's Structure, except to the extent caused by AT&T's willful or intentional misconduct, or gross negligence.

Section 22.3, in turn, provides:

AT&T will indemnify, hold harmless, and, on request, defend Attaching Party from any Claim or Liability, if such Claim and/or Liability arises out of AT&T's work in, on, on in the vicinity of AT&T's Structure and/or AT&T's access to or use of AT&T's Structure, except to the extent caused by Attaching Party's willful or intentional misconduct, or gross negligence.

California; Southwestern Bell Telephone Company, d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas; and Wisconsin Bell, Inc., d/b/a AT&T Wisconsin, and Simwood Inc., approved by the Commission on July 16, 2020 (also applies to the states of Arkansas, Florida, Missouri, Ohio, Texas, and Wisconsin); (3) Interconnection and/or Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee; Illinois Bell Telephone Company, LLC, d/b/a AT&T Illinois, Indiana Bell Telephone Company, d/b/a AT&T Indiana; Michigan Bell Telephone Company, d/b/a AT&T Michigan; Nevada Bell Telephone Company, d/b/a AT&T Nevada and AT&T Wholesale; The Ohio Bell Telephone Company, d/b/a AT&T Ohio, Pacific Bell Telephone Company, d/b/a AT&T California; Southwestern Bell Telephone Company, d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas; and Wisconsin Bell, Inc., d/b/a AT&T Wisconsin and CBTS Technology Solutions, LLC, in the states of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, and Texas, CBTS Technology Solutions, Inc. in the state of Michigan, Cincinnati Bell Any Distance, in the states of Alabama, California, Louisiana, Mississippi, and Wisconsin, Cincinnati Bell Extended Territories LLC, in the states of Indiana, Kentucky and Ohio, approved by the Commission on February 19, 2020 (also applies in the states of Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Wisconsin); (4) Interconnection and/or Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee, *et al.*, and Metro FiberNet, LLC, approved by the Commission on January 7 2019; and (5) Interconnection and/or Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, Attachment 03A—Structure Access Poles, Ducts, Conduits, and Rights-of-Way between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee, *et al.*, approved by the Commission on June 29, 2018.

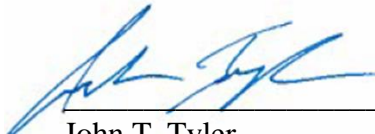
Such indemnity provisions are standard provisions found in AT&T's ICAs, Stand-Alone Structure Access Agreements, and are reasonable for inclusion in the Tariff.

The Commission should reject KBCA's protestations and approve the Tariff because: (a) it has repeatedly approved the same language in ICAs; (b) it is reasonable; (c) it ensures that all Attaching Parties, regardless of the legal mechanism under which they attach, are treated the same; and (d) it is consistent with AT&T's Structure Access Agreements in the 21 states in which AT&T operates as an ILEC. Thus, the Commission should dismiss KBCA's objection with regard to AT&T's indemnification provision in the Tariff.

Conclusion

For the foregoing reasons, AT&T requests the Commission reject KBCA's Objections to AT&T's Proposed Pole Attachment Tariff, and find the Tariff, as submitted to the Commission on February 28, 2022, adequate, efficient, and reasonable.

Respectfully Submitted,



John T. Tyler
AVP – Senior Legal Counsel

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